

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs May 14, 2008

**MARCIE A. MURRAY v. REUBEN HODGE, WARDEN**

**Appeal from the Criminal Court for Davidson County**  
**No. 94-C-1532 Steve Dozier, Judge**

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**No. M2007-01394-CCA-R3-HC - Filed September 24, 2008**

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The pro se petitioner, Marcie A. Murray, appeals as of right the Davidson County Criminal Court's summary dismissal of her petition for a writ of habeas corpus. The petitioner seeks relief from her sentences of life imprisonment plus twenty years resulting from her convictions in Davidson County for first degree murder and conspiracy to commit first degree murder. The habeas corpus court summarily dismissed her petition for failure to state a cognizable claim. Following our review, we affirm the judgment of the habeas corpus court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, and J. C. McLIN, JJ., joined.

Marcie A. Murray, Memphis, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General & Reporter; Cameron L. Hyder, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Pamela Anderson, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

**OPINION**

The record reflects that the petitioner's convictions arose from her involvement in the December 1994 murder of her sister's husband, Don Hurt. The petitioner's sister, Sharon R. Hurt, and her husband, James Murphy, were also convicted of the offenses with her sister receiving an effective sentence of life imprisonment plus twenty-four years and her husband receiving an effective sentence of life imprisonment plus twenty-two years.<sup>1</sup> The petitioner and her codefendants were tried jointly and their convictions and sentences were affirmed on direct appeal. State v. James

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<sup>1</sup> Sharon R. Hurt filed an identical application for a writ of habeas corpus that was also summarily dismissed, but on procedural grounds, by a different division of the Davidson County Criminal Court. Both the petitioner and her sister filed their applications with the assistance of the petitioner's husband, James Murray.

Murray, Marcie Murray and Sharon R. Hurt, No. 01C01-9702-CR-00066, 1998 WL 934578 (Tenn. Crim. App. Dec. 30, 1998), perm. app. denied (Tenn. June 28, 1999). The petitioner also unsuccessfully petitioned for post-conviction relief, the denial of which was affirmed on appeal. Marcie A. Murray v. State, M2002-03098-CCA-R3-PC, 2004 WL 305774 (Tenn. Crim. App. Feb. 18, 2004).

The petitioner's May 8, 2007, application for a writ of habeas corpus alleges that her twenty year sentence for conspiracy to commit first degree murder is void because it was imposed in violation of Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004). The petition also alleges that the imposition of consecutive sentences was illegal because the trial court failed to make appropriate findings to support the imposition of consecutive sentences. The trial court summarily dismissed the petition for failure to state a cognizable claim. On appeal, the petitioner asserts that she is entitled to habeas corpus relief and, additionally, that the imposition of consecutive sentences violates Blakely.<sup>2</sup>

### ANALYSIS

Tennessee law provides that "[a]ny person imprisoned or restrained of his liberty under any pretense whatsoever . . . may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment." Tenn. Code Ann. § 29-21-101. Habeas corpus relief is limited and available only when it appears on the face of the judgment or the record of proceedings below that a trial court was without jurisdiction to convict the petitioner or that the petitioner's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). To prevail on a petition for a writ of habeas corpus, a petitioner must establish by a preponderance of the evidence that a judgment is void or that a term of imprisonment has expired. See State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). If a petition fails to state a cognizable claim, it may be dismissed summarily by the trial court without further inquiry. See State ex rel. Byrd v. Bomar, 214 Tenn. 476, 483, 381 S.W.2d 280, 283 (1964); Tenn. Code Ann. § 29-21-109. We note that the determination of whether to grant habeas corpus relief is a matter of law; therefore, we will review the habeas corpus court's finding de novo without a presumption of correctness. Smith v. Lewis, 202 S.W.3d 124, 127 (Tenn. 2006).

Our courts have held that Blakely violations, in and of themselves, are constitutional violations, but do not render a judgment void. See Timothy R. Bowles v. State, No. M2006-01685-CCA-R3-HC, 2007 WL 1266594, at \*2 (Tenn. Crim. App. May 1, 2007); Alfio Orlando Lewis v. Ricky Bell, No. M2004-02735-CCA-R3-HC, 2005 WL 884998, at \*2 (Tenn. Crim. App. Apr. 14, 2005); James R. W. Reynolds v. State, No. M2004-02254-CCA-R3-HC, 2005 WL 736715, at \*2 (Tenn. Crim. App. Mar. 31, 2005), perm. app. denied (Tenn. Oct. 10, 2005); Earl David Crawford

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<sup>2</sup> On January 11, 2008, the petitioner filed in this court an amendment to the petition for habeas corpus relief adding the additional allegation regarding Blakely and consecutive sentencing. However, as discussed in this court's opinion, this issue was not raised in the petition at the habeas corpus court level and the petitioner may not change theories of relief on appeal. Therefore, we conclude that this issue is waived.

v. Ricky Bell, No. M2004-02440-CCA-R3-HC, 2005 WL 354106, at \*1 (Tenn. Crim. App. Feb. 15, 2005), perm. app. denied (Tenn. June 27, 2005). Because a Blakely violation renders a judgment merely voidable as opposed to void, it is not subject to attack through a writ for habeas corpus relief. See Billy Merle Meeks v. Ricky J. Bell, Warden, No. M2005-00626-CCA-R3-HC, 2007 WL 4116486, at \*12 (Tenn. Crim. App. Nov. 13, 2007), perm. app. denied (Tenn. Apr. 7, 2008); see also Passarella v. State, 891 S.W.2d 619, 627 (Tenn. 1994).

Likewise, challenges to the findings underlying the imposition of consecutive sentences are not cognizable in a habeas corpus proceeding. See Tommy Dixon v. State, W2005-02921-CCA-R3-HC, 2006 WL 1491419 (Tenn. Crim. App. May 31, 2006). The petitioner has raised Blakely's application to consecutive sentencing for the first time on appeal; therefore it is waived. However, we also note that our courts have consistently held Blakely inapplicable to consecutive sentencing. State v. John Britt, W2006-01210-CCA-R3-CD, 2007 WL 4355480 (Tenn. Crim. App. Dec. 12, 2007), perm. app. denied (Tenn. Apr. 28, 2008). For these reasons, we conclude that the summary dismissal was appropriate.

#### CONCLUSION

Having discerned no error in the trial court's summary dismissal of the petition for a writ of habeas corpus, the judgment of the trial court is affirmed.

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D. KELLY THOMAS, JR., JUDGE